

product. For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all of the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the International Organization for Standardization's standards and guidelines relating to "quality management" systems. "Quality management" is defined as what the manufacturer does to ensure that its products or services satisfy the customer's quality requirements and comply with any regulations applicable to those products or services.

Manufacturer. An entity that performs the necessary chemical and/or mechanical processes to make a final marketable product.

Mature market products. Biobased products that are not eligible for Federal preferred procurement or labeling as defined under subpart B of part 3201 of this title because they had significant national market penetration in 1972.

Other entity. Any person, group, public or private organization, or business other than USDA, or manufacturers or vendors of biobased products that may wish to use the "USDA Certified Biobased Product" certification mark in informational or promotional material related to a certified biobased product.

Program Manager. The manager of the BioPreferred Program.

USDA. The United States Department of Agriculture.

Vendor. An entity that offers for sale final marketable biobased products that are produced by manufacturers.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.3 Applicability.

(a) *Manufacturers, vendors, and designated representatives.* The requirements in this part apply to all manufacturers and vendors, and their designated representatives, who wish to participate in the USDA voluntary labeling program for biobased products. Manufacturers and vendors wishing to participate in the voluntary labeling program are required to obtain and maintain product certification.

(b) *Other entities.* The requirements in this part apply to other entities who wish to use the certification mark in promoting the sales or the public awareness of certified biobased products.

§ 3202.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product.* The product for which certification is sought must be a biobased product as defined in § 3202.2 of this part.

(b) *Minimum biobased content.* The biobased content of the product must be equal to or greater than the applicable minimum biobased content, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) *BioPreferred Products.*

(i) *Product is within a single product category.* If the product is within a single product category that, at the time the application for certification is submitted, has been designated by USDA for Federal preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(ii) *Product is within multiple product categories.* If a biobased product is marketed within more than one product category identified for preferred Federal purchasing, uses the same packaging for each product, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable product categories in order to use the certification mark on the product. However, if the manufacturer packages

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the product differently for each product category, then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each product category for which the applicant seeks to use the certification mark.

(2) *Finished biobased products that are not BioPreferred Products.*

(i) If the product is not an intermediate ingredient or feedstock, and is not within a product category eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the product to be labeled.

(ii) If a product certified under paragraph (b)(2)(i) of this section is within a product category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

(3) *Products that are intermediate ingredients or feedstocks.*

(i) If the product is an intermediate ingredient or feedstock that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alter-

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native applicable minimum biobased content would become the applicable minimum biobased content for the intermediate ingredient or feedstock product to be labeled.

(ii) If a product certified under paragraph (b)(3)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 3201.

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§ 3202.5 Initial approval process.

(a) *Application.* Manufacturers and vendors seeking USDA approval to use the certification mark for an eligible biobased product must submit a USDA-approved application for each biobased product. A standardized application form and instructions are available on the USDA BioPreferred Program Web site (<http://www.biopreferred.gov>). The contents of an acceptable application are as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *General content.* The applicant must provide contact information and product information including all brand names or other identifying information, biobased content and testing documentation, intended uses, and, if applicable, the corresponding product category classification for Federal preferred procurement. The applicant must attach to the application documentation demonstrating that the reported biobased content was tested by a third-party testing entity that is ISO 9001 conformant.

(2) *Certifications.* The applicant must certify in the application that the product for which use of the certification mark is sought is a biobased product as defined in § 3202.2 of this part.

(3) *Commitments.* The applicant must sign a statement in the application that commits the applicant to submitting to USDA the information specified in paragraph (c)(1) through (c)(4) of this section, which USDA will post to the USDA BioPreferred Program Web site, and to providing USDA with up-to-date